IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.657 OF 1997

Pandurang Hanmantrao Yesardekar, .. Petitioner.

Vs

The State of Maharashtra & Ors. .. Respondents

Mr.G.S.Godbole with Mr M.Muley, for the petitioner.

Mr C.R.Sonawane, for the respondents.

CORAM : V.G.PALSHIKAR, Ag.C.J., &

D.B.BHOSALE,J.

DATE : 20.12.2005.

ORAL JUDGMENT : (PER D.B.Bhosale, J.)

1. Heard the learned counsel for the parties.

2. The petitioner, by this writ petition, has assailed the order dated 25.1.1999 passed by the Committee for Scrutiny and Verification of Tribe Claims, Pune, by which the petitioner’s claim that he belongs to "Thakar, Scheduled Tribe", has been rejected and the caste certificate issued by the Executive Magistrate, Panhala has been cancelled and confiscated.

3. The factual matrix that may be relevant and material for deciding this writ petition, briefly

stated, is as follows. The petitioner is a Government servant. He claims that he got the employment in open category and he has never taken any benefit of his status as a scheduled tribe candidate in his entire career till this date. However, with a view to take benefits in the employment, such as promotions and further opportunities, he obtained the caste certificate bearing No.RK.SR.3913/88 dated 18.10.1983. For getting the caste certificate, the petitioner claims that, he had submitted all the relevant documents including the birth extract of his cousins dating back to 1934 and 1935. His caste certificate was, thereafter, referred to the Scrutiny Committee some time in 1991. The Scrutiny Committee called upon the petitioner to produce documents in support of his caste claim which he complied with by producing the seven documents in support thereof. The Scrutiny Committee, after giving an opportunity of being heard and scrutinising all the seven documents produced by him and considering the traits, characteristics and customs as mentioned by the petitioner and his father in the course of personal hearing, held that except the first two documents, all other documents produced by the petitioner are related to "Thakar Caste" and not "Thakar, Scheduled Tribe". It was further held that the traits quoted at Sr.Nos 2 to 6

by the petitioner and his father are also not in any way related to Thakar/Thakur, Scheduled Tribe. The Scrutiny Committee also took into account the petitioner's nephew Uday Baburao Yesardekar's tribe claim and the personal hearing given to him on 8.8.1975 in the course of deciding his caste claim. Accordingly, the Scrutiny Committee held that the petitioner does not belong to Thakar, Scheduled Tribe community and as such invalidated his claim and consequently cancelled the certificate issued by respondent no.4 - Executive Magistrate and confiscated the same.

4. Mr Godbole, learned counsel for the petitioner, assailed the order of the Scrutiny Committee mainly on the following grounds. Firstly, that the Scrutiny Committee did not take into consideration the birth extracts of his cousin which were issued prior to 1935 and that they were of preconstitutional period when no benefits were extended to the Scheduled Tribes. These two documents of 1934 and 1935, according to Mr Godbole, are sufficient to hold that the petitioner belongs to Thakar, Scheduled Tribe community. Then, he submitted that the Scrutiny Committee erred in overlooking the instructions issued by the Government as reflected in the letter dated 4.9.1985 by which area restrictions for

deciding the claim of tribe were removed and in view thereof there was no error on the part of the Executive Magistrate in issuing the caste certificate to the petitioner. He further submitted that merely because the petitioner could not give the satisfactory replies in the course of hearing cannot be a ground for rejecting his claim. Moreover, according to the petitioner, he was interviewed by only one member of the Scrutiny Committee and the other two members were not present when he was interviewed by the said member. The Member interviewed the petitioner, according to the petitioner, was not a member of the Committee at the relevant time. This shows that the impugned order was passed mechanically and without application of mind and hence is liable to be set aside. Lastly, he submitted that merely because his caste is described as Thakar caste in the documents produced by him does not mean that he does not belong Thakar, Scheduled Tribe. Mr Godbole placed reliance upon the judgment of the Apex Court in **Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Anr Vs. State of Kerala and Anr, (1994) 1 Supreme Court Cases 359** in support of his contention. On the other hand, Mr Sonawane, learned AGP, invited our attention to the impugned order and the documents relied upon by the petitioner and contended that all the

documents including the birth certificates of the petitioner's nephew dating back to 1934 and 1935 were also taken into consideration while deciding the claim. All these documents show "caste Thakar" and not "Thakur, Scheduled Tribe". No error, much less the error of law, has been committed by the Committee while deciding the claim of the petitioner warranting interference by this Court in its writ jurisdiction under Article 226 of the Constitution of India.

5. We have careful perused the impugned order and all the annextures to the writ petition. The petitioner has furnished the seven documents in support of his tribe claim and has quoted six traits being practiced/followed by their tribe. Thakar or Thakur is the community, which consists of Ka-Thakar/Thakur, Ma-Thakar/Thakur, and that is included in the "Scheduled Tribe" List at sr no.44. Whereas "Cast Thakar", including Grambhat, Brahmbhat, is included in the list of "OBC" at sr no.200.It is a part of Balutedar system in village society. "Thakar" is also included in the list of "Nomadic Tribe" at serial no.22. They lead nomadic way of life and move from village to village. This clearly shows that mention of or reference to Thakar or Thakur alone would not be sufficient to

determine to which community a candidate belongs to, whether "Scheduled Tribe" or "OBC" or"Nomadic Tribe". Therefore, only on the basis of the documents showing "caste Thakar" or "Thakur" without further details would be difficult to determine whether a candidate belongs to Scheduled Tribe, OBC or Nomadic Tribe. In the present case, the Committee found that the documents produced by the petitioner at sr nos. 3 to 7 are related to Thakar caste and not Thakar, Schedule Tribe. We also perused the documents and found that the documents at sr nos 3 to 7 would not help the petitioner to assert that he belongs to Thakar, Scheduled Tribe. In so far as the first two documents are concerned, they are of no avail to the petitioner. The first document is the birth extract of the petitioner dated 17.9.1988 issued by the Tahasildar, Panhala and other is the caste certificate dated 18.10.1988 which was under consideration before the Scrutiny committee. Both these documents were issued by the concerned authority on the basis of the documents at sr.nos 3 to 7. The Committee found it difficult to determine the exact caste or community of the petitioner since the documents do not specify as to which community the petitioner belongs to. Except the word "Thakar or Thakur",nothing more is mentioned in the documents relied upon by the petitioner. It is against

this backdrop, the Committee was left with no alternative but to examine the claim with reference to traits, characteristics and customs of the Tribe by examining the petitioner and his father and after affording an opportunity of being heard to them. In the course of personal hearing/investigation the petitioner and his father furnished the following information regarding their tribe claim.

> "1) Traditional occupation of his family are agricultural and mind forest product.
>
> 2) Deities of his family as well as his community are Vitthai Devi and Rai Jyotirling.
>
> 3) Sankspasl, Ingle, Ahirekar, Jadhav are the clans and surnames of the peoples among his community.
>
> 4. The relatives and peoples of his community mainly reside in Shahuwadi, Panhala and Kolhapur, city in Kolhapur District.
>
> 5. Mother tongue as well as dialect of their family and community is Marathi.
>
> 6. Covered the head with the end of Sari's part is treated as taboo the women among his community."

From the above information, the Committee found that the traits quoted at sr.nos 2 to 6 are not in any way related to Thakar/Thakur, Scheduled Tribe nor the petitioner, before us, could point out why and how they are sufficient to hold the caste/community of the petitioner as Thakar/Thakur, Scheduled Tribe. We find

no reason to disturb the findings of fact recorded by the Committee in respect thereof. It appears that the petitioner's nephew Uday Yesardekar's tribe claim was also examined and personal hearing was given to him on 8.8.1975. The Committee in the impugned order has observed that during the course of personal hearing to Uday Yesardekar, he had furnished the information which was not sufficient to validate his caste claim. In view thereof, we find absolutely no reason to interfere with the findings of fact recorded by the Committee on the basis of the documents produced by the petitioner and the information furnished by him and his father regarding their traits and customs.

6. Insofar as the submission of Mr Godbole that the Committee did not take into consideration the two documents, viz the birth register extracts of 1934 and 1935 of the petitioner's nephew, is concerned, we find no substance in the said submission. Our attention was invited by Mr Godbole to the birth extract of Sakharam Yesardekar showing his date of birth as 4.3.1935 and of Bandu Narayan Jadhav as 16.10.1934. Both, according to the petitioner, are his nephews. Insofar as documents at sr.nos 4 and 7 before the Committee are concerned, they were of Sakharam Yesardekar and Bandu Jadhav. The

dates mentioned in the list of the documents as 9.7.1991 is the date of covering letter and not their birth dates. It is clear that the Committee did take into consideration the birth register extracts of Sakharam and Bandu of 1935 and 1934 and recorded its finding that they also show "caste Thakar" and not "Thakar, Scheduled Tribe". From bare perusal of those extracts annexed to the petition, it is clear that only "caste Thakar" is mentioned and not "Thakar, Scheduled Tribe." That seems to be the reason why the Committee entered into further enquiry as to the traits, characteristics and customs of Thakar, Scheduled Tribe community to find out whether the petitioner's claim is genuine. Insofar as the last submission of Mr Godbole that only one member interviewed the petitioner and he was not member of the Committee at the relevant time, is concerned, besides it is a disputed question of fact, the reference to the outcome of the interview in the impugned order, has not been disputed by the petitioner. In other words, the six traits quoted by the Committee in the Judgment, as stated by the petitioner and his father, have not been disputed as not correct or its reproduction in the order was wrong or incorrect. In view thereof we find no substance in this submission also. We are satisfied that no error whatsoever is committed by the Committee

for arriving at the conclusion that the petitioner does not belong to Thakar, Scheduled Tribe. Insofar as the submission of Mr Godbole regarding area restrictions is concerned, we find no substance in the same since that was not only the ground on which the petitioner's claim was rejected. In view of the peculiar facts and circumstances of the case, the judgment of the Supreme court in **Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Anr Vs. State of Kerala and Anr case, (supra)** is of no avail to the petitioner. In the result, this petition is dismissed. No order as to costs.

(V.G.Palshikar, AG.C.J.)

(D.B.Bhosale, J.)

HIGH COURT
CIVILI APPELLATE SIDE

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Date of Judgment:

20.12.2005

For approval and signature

THE HON'BLE ACTING CHIEF JUSTICE SHRI V.G.PALSHIKAR,

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur

Aurangabad or Goa offices?